

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ELAINE HANCHARD-JAMES, Individually and
on Behalf of All Other Persons Similarly Situated,

Plaintiffs,

-against-

THE BROOKDALE HOSPITAL MEDICAL
CENTER, THE BROOKDALE UNIVERSITY
HOSPITAL AND MEDICAL CENTER, ALTHEA
BAILEY, AND JOHN DOES #1-10,

Defendants.
-----X

Civ. No.: 12-CV-01922

Cogan, J.

STIPULATION DEFINING COLLECTIVE ACTION GROUP

WHEREAS, Defendants filed a pre-answer motion to dismiss Plaintiffs' First Amended Complaint on July 6, 2012, and this Court issued a Decision and Order on this motion, dated on August 8, 2012, dismissing Plaintiffs' First Amended Complaint as to the individual-named Defendants;

WHEREAS, Plaintiff was employed by The Brookdale Hospital Medical Center ("Brookdale") as an hourly paid registered nurse during the time period addressed in this lawsuit; and,


WHEREAS, Plaintiff filed a motion for conditional certification of a collective action on July 6, 2012, and by Order, dated August 9, 2012, this Court conditionally certified a collective action solely under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., comprised of "all current and former employees of The Brookdale Hospital Medical Center who worked as nurses' during the relevant time period." In said Order, and the term "nurses" was undefined;

Now therefore, the parties through their undersigned counsel hereby stipulate and agree as follows:

- 1) The Notice directed by the Court, attached hereto as Exhibit A, shall be sent solely to "all current and former employees of The Brookdale Hospital Medical Center who were registered nurses and were paid by the hour at any time from August 9, 2009 to August 24, 2012," which group includes approximately 500 hourly paid registered nurse employees, current and former. This group does not include, among others, licensed practical nurses ("LPNs") or certified nursing assistants (CNAs").
- 2) Notice shall not be issued to anyone employed or formerly employed as a registered nurse who was paid exclusively by salary during their employment at Brookdale within the period August 9, 2009 to August 24, 2012.
- 3) Nothing herein affects the rights, if any, of any registered nurse or other present or former employee of Brookdale who does not opt-in to join this lawsuit.
- 4) Nothing stated herein shall modify or otherwise affect any right or defense available to Plaintiff personally or to Defendant Brookdale, including specifically Defendant's right to seek decertification of the conditionally certified collective action.
- 5) A notice form is attached for the Court's approval, which has been revised to reflect the Court's order, dated August 9, 2012, and this Stipulation.

LAW OFFICE OF WILLIAM COUDERT RAND
ATTORNEYS FOR PLAINTIFF
228 East 45th Street, 17th Floor
New York, New York 10017
(212) 286-1425

By:


WILLIAM COUDERT RAND, ESQ.

Dated:

8/24/12

MARTIN CLEARWATER & BELL LLP
ATTORNEYS FOR DEFENDANT
220 East 42nd Street
New York, New York 10012
(212) 397-3122

JACKSON LEWIS LLP

ATTORNEYS FOR DEFENDANT

58 S. Service Road, Suite 410
Melville, NY 11747
(631) 247-0404

By:


PAUL J. SIEGEL, ESQ.

Dated:

8/24/12

SO ORDERED on this ____ day of August, 2012

United States District Judge

William C. Rand, Esq. (WR-7685)
LAW OFFICE OF WILLIAM COUDERT RAND
488 Madison Avenue, Suite 1100
New York, New York 10022
Phone: (212) 286-1425; Fax: (646) 688-3078
Email: wcrand@wcrand.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	
ELAINE HANCHARD-JAMES, Individually	:
and on Behalf of All Other Persons Similarly	:
Situated,	:
	:
Plaintiff,	:
	:
-against-	:
	:
THE BROOKDALE HOSPITAL MEDICAL	:
CENTER, THE BROOKDALE UNIVERSITY	:
HOSPITAL AND MEDICAL CENTER,	:
ALTHEA BAILEY, and JOHN DOES	:
#1-10,	:
	:
Defendant.	:
-----X	

ECF

12 Civ. 01922-BMC

NOTICE OF LAWSUIT WITH OPPORTUNITY TO JOIN

FROM: WILLIAM C. RAND-Attorney for Plaintiff
Law Office of William Coudert Rand
488 Madison Avenue, Suite 1100, New York, N.Y. 10022
(212) 286-1425

TO: Current and former registered nurses who worked at THE BROOKDALE
HOSPITAL MEDICAL CENTER and/or THE UNIVERSITY HOSPITAL AND
MEDICAL CENTER ("Brookdale"), and were paid by the hour at any time on or
after April 19, 2009.

RE: Fair Labor Standards Act lawsuit against Brookdale seeking payment for alleged
overtime work.

I. INTRODUCTION

The purpose of this notice is to inform you of the existence of a collective action lawsuit in which you potentially are "similarly situated" to the named Plaintiff, to advise you of how your rights may be affected by this suit, and to instruct you on the procedure for participating in this suit. The lawsuit at issue was filed, on April 19, 2012, against THE BROOKDALE HOSPITAL MEDICAL CENTER, THE UNIVERSITY HOSPITAL AND MEDICAL CENTER, ALTHEA BAILEY, and others in the United States District Court for the Eastern District of New York. The Plaintiff alleges that Brookdale violated the Federal Fair Labor Standards Act by not paying overtime compensation for hours in excess of 40 in any work week resulting from her and other hourly paid registered nurses allegedly working during meal breaks or after conclusion of the regularly scheduled shift or tour. The lawsuit is seeking back pay and liquidated damages from Brookdale, as well as costs and attorney's fees to compensate such eligible employees. Brookdale denies the Plaintiff's allegations, and denies that it is liable to the Plaintiff for any of the back pay, damages, costs or attorney's fees sought.

II. COMPOSITION OF THE COLLECTIVE ACTION CLASS

The named Plaintiff seeks to sue on behalf of herself and also on behalf of other employees with whom she alleges she is similarly situated. Specifically, under the federal law, the Plaintiff seeks to sue on behalf of any and all **current and former registered nurses who worked at Brookdale on or after August 9, 2009 and who were paid on an hourly basis.**

III. YOUR RIGHT TO PARTICIPATE IN THE LITIGATION

If you fit within the definition above, you may join this case (that is, you may "opt-in"). By completing and mailing the attached "Consent to Become Party Plaintiff" to Plaintiff's counsel at the following address:

PLAINTIFF'S COUNSEL

William C. Rand, Esq.
LAW OFFICE OF WILLIAM COUDERT RAND
488 Madison Avenue, Suite 1100
New York, New York 10022
Telephone: (212) 286-1425; Facsimile: (646) 688-3078
E-mail: wcrand@wcrand.com

The form must be sent to Plaintiff's counsel in sufficient time to have Plaintiff's counsel file it with the federal court on or before the date that is 65 days from **[date of mailing of the Notice]**. If you fail to return the "Consent to Become Party Plaintiff" to the Plaintiff's counsel in time for it to be filed with the federal court on or before the above deadline, you may not be able to participate in this lawsuit.

IV. EFFECT OF JOINING THIS ACTION

If you choose to join in this case, you will be bound by the Judgment, whether it is favorable or unfavorable. Should you decide to join this case, you will be subject to discovery obligations, which may include providing deposition or trial testimony under oath, responding to document requests and responding to requests for information. Your receipt of this Notice does not indicate any entitlement to recovery as the outcome of the legal action has not yet been determined.

The attorney for the class plaintiffs is being paid on a contingency fee basis, which means that if there is no recovery there will be no attorney's fee. If there is a recovery, the attorney for the class will receive a part of any settlement obtained or money judgment entered in favor of all members of the class. If you sign and return the Consent to Become Party Plaintiff form attached to this Notice, you are agreeing to designate the class representative as your agent to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit. Decisions and agreements made and entered into by the representative Plaintiff will be binding on you if you join this lawsuit. However, the Court has retained jurisdiction to determine the reasonableness of any contingency agreement entered into by the Plaintiff with counsel, and to determine the adequacy of the plaintiff's counsel.

Furthermore, you can join this lawsuit by counsel of your own choosing. If you do so, your attorney must file an "opt-in" consent form by 65 days from [date of mailing of the Notice].

V. TO STAY OUT OF THE LAWSUIT

If you do not wish to be part of the lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be part of the federal claims portion of this case in any way and will not be bound by or affected by the result (whether favorable or unfavorable). Your decision not to join this case will not affect your right to bring a similar case on your own at a future time. However, claims under the Fair Labor Standards Act must be brought within two (2) years of the date the claim accrues, unless the employer's violation of the law was "willful," in which case the claim must be brought within three (3) years. In certain circumstances, such as when an employer fails to post notice of employees' rights, a court may toll the statute of limitations.

VI. NO RETALIATION PERMITTED

Federal law prohibits Brookdale from discharging or in any other manner discriminating or retaliating against you because you "opt-in" to this case, or have in any other way exercised your rights under the Fair Labor Standards Act.

VII. YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this suit, and agree to be represented by the named Plaintiff through his attorney, your counsel in this action will be:

William C. Rand, Esq.
LAW OFFICE OF WILLIAM COUDERT RAND
488 Madison Avenue, Suite 1100
New York, New York 10022
Telephone: 212-286-1425; Fax: 646-688-3078
Email: wcrand@wcrand.com

VIII. COUNSEL FOR DEFENDANT

The counsel for Defendant is:

Steven M. Berlin, Esq.
Martin Clearwater & Bell LLP
220 East 42nd Street
New York, New York, 10017
Telephone: 212-916-0920
Fax: 212-949-7054

Paul J. Siegel, Esq.
Jackson Lewis LLP
58 S. Service Road, Suite 410
Melville, NY 11747
Telephone: 631-247-4661
Fax: 631-247-0425

IX. FURTHER INFORMATION

Further information about this Notice, the deadline for filing a Consent to Become Party Plaintiff, or answers to questions concerning this lawsuit may be obtained by writing or phoning the Plaintiff's counsel at the telephone number and address stated in Paragraph VII above.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE FEDERAL DISTRICT COURT, HONORABLE JUDGE BRIAN M. COGAN. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFF'S CLAIMS OR OF THE DEFENDANT'S DEFENSES.

DATED: _____, 2012

HONORABLE BRIAN M. COGAN

U.S.D.J.